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January 20, 2025

The Honorable Judge Gabriel Gorenstein

United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Sai Malena Jimenez-Fogarty v. Thomas Fogarty, et al. Case No.: 1:24-CV-08705-JLR

Re: Opposition to Defendant Fogarty's Third Request for Extension of Time

Dear Honorable Judge Gorenstein,

I respectfully submit this response in opposition to Defendant Fogarty's third request for an extension of time to file an opposition to my motion to disqualify counsel, which was originally due on January 10, 2025, then changed to January 21, 2025, pursuant to the Court's January 8, 2025, Order. For the reasons outlined below, I believe that granting further extensions would be unjustified and would unfairly delay the proceedings.

1. **Previous Extensions Granted:** As Ms. Hindin herself points out, Defendant Fogarty has already been granted *two* extensions of time to respond to this motion. The initial deadline for Defendant's response, January 10, 2025, was one day after my own filing deadline of January 9, 2025. Subsequently, the Court's January 8, 2025, Order explicitly granted Defendant a further extension until January 21, 2025—a full four days *after* my subsequent filing on January 16, 2025. I consented to that extension. This timeline unequivocally demonstrates that Defendant has been afforded substantial additional time to prepare. This present request for a *third* extension is thus not only unwarranted but also raises serious concerns about a deliberate strategy of delay.
2. **No New Allegations in Amended Complaint:** Defendant's assertion that my amended complaint, filed on January 17, 2025, contains new factual allegations concerning Brian Gardner is misleading. The allegations related to Mr. Gardner in the amended complaint are identical to those already included in my motion to dismiss concerning Cole Schwartz, filed on November 27, 2024, which was uploaded by the Pro Se Unit in December 2024, these allegations have been on the record for an extended period, and Defendant has had ample time to prepare a response. Therefore, the argument that these new allegations warrant further delay is disingenuous and without merit.

3. **Lack of Justification for Further Delay:** The stated reason for this second request—Brian Gardner’s out-of-country travel until January 23, 2025—is insufficient. Ms. Hindin, as co-counsel for Defendant, is fully capable of preparing and filing the response. Furthermore, the law firm of Cole Schwartz possesses numerous attorneys, paralegals, and support staff, both in New York and other jurisdictions, who could assist in this matter. The unavailability of one attorney does not constitute a valid legal basis for delaying the proceedings. "A party seeking an extension of time must demonstrate good cause. Mere attorney inconvenience is not sufficient." See e.g., *In re Rains*, 428 F.3d 730, 733 (7th Cir. 2005).
4. **Plaintiff’s Compliance Despite Adverse Circumstances:** I was able to meet the extended deadline for submitting my amended complaint despite facing severe medical challenges. Specifically, I was undergoing excruciating pain due to a serious medical condition which includes bleeding ulcers, a back injury caused by Defendant domestic violence which requires a surgical procedure, and I also had to cooperate with the NYPD Special Victims Unit (SVU) who opened a case on behalf my nine-year-old daughter for sexual assault which involve Defendant Fogarty. Despite these challenges, I met my deadline without requesting further extensions. I trust that the Court will consider my compliance with the timeline as evidence of my commitment to moving this case forward without delay.
5. **Defendant’s History of Delay Tactics:** Defendant Fogarty has a documented history of employing delay tactics in legal proceedings, as explicitly stated by Magistrate Judges and numerous Federal Judges in multiple class action lawsuits regarding wage theft, which is a federal crime, where he was found to have stolen millions of dollars from employees of color. These prior instances demonstrate a pattern of behavior designed to obstruct and prolong legal processes. This current request falls squarely within this established pattern. This is not the first time that this has happened and Cole Schwartz was representing Defendant Fogarty in that situation as well.
6. **Improper Contact by Counsel:** The after-hours and weekend contact by Ms. Hindin on January 17 and 19, 2025, respectively, is concerning and raises questions about appropriate professional conduct, especially given the sensitive nature of this case and the existing legal disputes. I did not respond to Ms. Hindin’s emails because they were sent after business hours on a Friday and a Sunday, and as a result of Defendant Fogarty’s false allegations, I have been subjected to supervised visits with my children for over three years without an initial evidentiary hearing or a yearly hearing as required by law. Due to these circumstances, I am not allowed to use my phone during visits, which prevented me from responding. The failure to respond was not an intentional disregard, but rather a consequence of the restrictions placed on me, which are a direct result of Defendant Fogarty’s actions and the actions of the other seven defendants, including Defendant Eisenpress, which is included in this RICO complaint.

7. **Conflict of Interest:** As previously stated in my Motion to Disqualify, Brian Gardner cannot ethically represent Defendant Fogarty due to numerous conflicts of interest. This issue requires prompt resolution and should not be further delayed.
8. **Request for Denial of Extension:** Given that Defendant has already been granted two extensions and considering the lack of any legitimate reason for further delay, and all the reasons stated above, I respectfully request that the Court deny Defendant's request for another extension. The repeated delays are **prejudicial to my ability to move this matter forward**, and I trust the Court will recognize that Defendant has had more than enough time to respond.

In conclusion, I respectfully urge the Court to deny Defendant Fogarty's request for an additional extension and to maintain the current deadline of January 21, 2025, for the opposition and February 3, 2025, for the reply. These extensions have already been generous, and any further delay will unnecessarily prolong this matter and deny me a timely resolution.

Thank you for your attention to this matter.

Respectfully submitted,

Sai Malena Jimenez Fogarty

Plaintiff